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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Affects:

* All papers shall be filed in the Lead Case, No. 19-30088 (DM).

-) Date: February 24, 2021
 -) Time: 10:00 a.m. (Pacific)
 -) Place: Telephonic/Video Appearance On
 United States Bankruptcy
 Courtroom 17,
 450 Golden Gate Ave., 16th Floor
 San Francisco, CA 94102
 -) Objection Deadline: February 17, 2021

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1 TO THE HON. DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE, THE
2 DEBTORS, AND ALL OTHER PARTIES-IN-INTEREST:

3 In October 2019, Phillip Rush (“Movant”) filed Proof of Claim No. 54699 (the “Claim”)
4 against Debtors, asserting a claim for \$525,000 in economic damages suffered as a result of the 2017
5 Tubbs Fire. Specifically, the Claim seeks damages for the loss of Movant’s home. At the time,
6 Movant was not represented by counsel and did not understand that he is also entitled to a recovery
7 based on the non-economic and personal injuries that he suffered as a result of the Tubbs Fire.

8 In December 2020, Movant retained counsel to represent him. As a result, under Federal Rule
9 of Bankruptcy Procedure (“FRBP”) 7015, Movant now seeks to amend his timely-filed Claim to
10 include additional damages (“Motion”). In particular, Movant seeks to add claims to recover for the
11 non-economic damages and personal injury damages that he suffered as a result of the Tubbs Fire.
12 Movant also seeks an award of attorneys’ fees, costs, and interest.

13 This Motion is based on the Points and Authorities set forth herein, the concurrently filed
14 Notice of Hearing, the Declaration of Robert Bryson in support of the Motion, and any other evidence
15 or argument presented to the Court at or before the time of the hearing on this matter.

16 **POINTS AND AUTHORITIES**

17 **1. FACTS**

18 **a. General Background**

19 In January 2019, the Debtors filed voluntary Chapter 11 petitions, commencing these cases.
20 Dkt No. 1.

21 Initially, the Court set a claims bar of October 21, 2019. Dkt. No. 2806. The claims bar date
22 was extended to December 31, 2019, to allow certain fire victims additional time to file claims
23 against the Debtors. Dkt. No. 4651.

24 Jointly, the Debtors proposed a chapter 11 plan of reorganization that, among other things,
25 channeled all fire victim claims to the Fire Victim Trust (“Plan”). Dkt. No. 8048. On June 20, 2020,
26 the Court entered an order confirming Debtors’ Plan. Dkt. No. 8053.

27 **b. Movant’s Claim Against the Debtors**

28 On October 9, 2019, acting in *pro per*, Movant filed the Claim, asserting damages of

1 \$525,000 against the Debtors for the loss of his home in the Tubbs Fire. Declaration of Robert Bryson
2 (“Bryson Decl.”) ¶5. In December 2020, Movant retained counsel to assist him in recovering
3 damages in connection with the destruction his home. *Id.* at ¶3. After reviewing the Claim and other
4 evidence available, it was determined that, in addition to economic damages, Movant suffered non-
5 economic and personal injury damages when his home was destroyed. *Id.* at ¶¶ 6-7. As a result,
6 Movant seeks to amend the Claim.

7 **2. MOVANT IS ENTITLED TO AMEND POC 54699 UNDER FRBP 7015.**

8 FRBP 7015 governs “[a]mended and [s]upplemental pleadings.” Applying this Rule, courts
9 consistently recognize that “[a] party that wishes to amend its claim after the bar date has passed must
10 obtain permission of the bankruptcy court.” *In re Quinn*, 423 B.R. 454, 463 (Bankr. D. Del. 2009).
11 *See also, In re Ben Franklin Hotel Assocs.*, 186 F.3d 301, 309 (3rd Cir. 1999).

12 Like other courts, the Ninth Circuit has “consistently applied the ‘so called rule of liberality in
13 amendments’ to creditors’ proofs of claim,” such that amended claims relate back to the previously
14 filed claim. *In re Holm*, 931 F.2d 620, 622 (9th Cir. 1991) (*quoting In re Anderson-Walker Indus., Inc.*, 798 F.2d 1285, 1287 (9th Cir. 1986)). *See also*, 4 Collier on Bankruptcy Proc. §501.02 (16th ed.
15 2020) (noting that courts freely allow amendments to a proof of claim, both before and after the bar
16 date). Summarizing the liberality in amendment standard as applied to a proof of claim, one court
17 stated, “[a]mendments to proofs of claim should be freely allowed where the purpose is to cure
18 defects in the claim as originally filed, to describe a claim with greater particularity, or to plead new
19 theories of recovery on facts set forth in the original claim.” *In re Ben Franklin Hotel Assocs.*, 186
20 F.3d at 309.

22 In the context of a motion to amend a complaint, the Ninth Circuit considers five factors in
23 deciding whether to permit an amended pleading: “(1) bad faith, (2) undue delay, (3) prejudice to the
24 opposing party, (4) futility of amendments, and (5) whether plaintiff has previously amended [its]
25 complaint.” *Learjet, Inc. v. Oneok, Inc. (In re Western States Wholesale Natural Gas Antitrust
26 Litigation)*, 715 F.3d 716, 737 (9th Cir. 2013) (*quoting Allen v. City of Beverly Hills*, 911 F.2d 367,
27 373 (9th Cir. 1990)). “It is the consideration of prejudice to the opposing party that carries the greatest
28 weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)

1 Here, Movant seeks to amend the Claim to include averments for the non-economic and
2 personal injury damages that he suffered as a result of the destruction of his home in the Tubbs Fire.
3 Bryson Decl. ¶¶6-7. It is clear that the amendment should be allowed. Bad faith and undue delay are
4 not present. Indeed, when Movant filed the Claim, he was not represented by counsel and did not
5 understand all of potential theories for recovery available to him as a result of his losses in the Tubbs
6 Fire. Shortly after Movant retained counsel, this Motion was filed, representing Movant's first request
7 to amend the Claim. Bryson Decl. ¶¶3-9. Further, the amendment is not futile. Movant undeniably
8 suffered non-economic and personal injury damages in connection with the destruction of his home,
9 meaning the proposed amendment merely adds a theory of recovery based on the same facts alleged
10 in the Claim. *In re Ben Franklin Hotel Assocs.*, 186 F.3d at 309. Most importantly, the Debtors will
11 not be prejudiced by the amendment as all fire-related claims have been channeled to the Fire Victim
12 Trust, which was established to fully compensate victims for Debtors' wrong-doing.

13 Thus, the Motion should be granted. Movant should be permitted to add allegations for the
14 recovery of non-economic and personal injury damages to the Claim based on the destruction of his
15 home. Movant should also be allowed to seek an award of attorneys' fees and interest. The Debtors
16 will not be harmed by the amendment as all fire-related claims have been channeled to the Fire
17 Victim Trust. And Movant sought the amendment shortly after retaining counsel and understanding
18 that he had a right to such recovery.

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3. CONCLUSION

For the foregoing reasons, the Motion should be granted. Movant should be allowed to amend the Claim to include the non-economic and personal injury damages that he suffered in connection with the destruction of his home in the Tubbs Fire. Movant should also be allowed to pursue his attorneys' fees and interest in connection with the Claim.

Respectfully submitted,

Dated: January 25, 2021

GRIMSHAW LAW GROUP, P.C.

By: 
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Dated: January 25, 2021

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